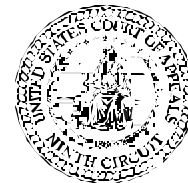




Cathy A. Catterson
Clerk of Court

Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
95 Seventh Street
Post Office Box 193939
San Francisco, California 94119-3939



(415) 556-9800

May 15, 2002

**Notice and Opportunity for Comment on
Proposed Amendments to the Circuit Rules**

Comments are invited on the following proposed amendments to:

- < **Circuit Rules 9-1.1 and 9-1.2, Release in Criminal Cases**
- and -
- < **Circuit Rule 27-11, Motions; Effect on Schedule.**

New or amended language is in bold print. Comments should be submitted to Cathy A. Catterson, Clerk of Court/Circuit Court Executive, no later than **June 21, 2002.**

CIRCUIT RULE 9-1

RELEASE IN CRIMINAL CASES

9-1.1 Release Pending Trial [Conviction] or Judgment of Conviction

(a) Every notice of appeal from a release or detention order entered before or at the time of a judgment of conviction shall bear the caption “FRAP 9(a) APPEAL.” Immediately upon filing, the district court shall forward the notice of appeal to the Court of Appeals Clerk’s Office. Upon filing the notice of appeal, counsel for the appellant shall follow the procedures set forth in Ninth Circuit Rule 27-3(a). Specifically, counsel shall contact the Court of Appeals’ motions unit to notify the court that such an appeal has been filed. ~~Unless otherwise directed by the Court, Within 14 days of the filing of a notice of appeal from a release or detention order entered before or at the time of a judgment of conviction, the appellant shall file a memorandum of law and facts in support of the~~

appeal **within fourteen (14) days of filing the notice of appeal.** Appellant's memorandum shall be accompanied by a copy of the district court's ~~release or~~ detention order, and, if the appellant questions the factual basis of the order, a transcript of the **district court** proceedings had on the motion for bail ~~made in the district court.~~ If unable to obtain a transcript of the bail proceedings, the appellant shall state in an affidavit the reasons why the transcript has not been obtained.

(b) **Unless otherwise directed by the court, respondent** ~~The appellee~~ shall file a response to appellant's memorandum within 7 days of ~~receipt thereof~~ **service.**
(Rev. 01/2001)

(c) **Unless otherwise directed by the court,** ~~A~~ appellant may file an optional a reply within ~~three (3) days of receipt of appellee's~~ **7 days of service of the response to the bail motion.** The appeal shall be decided promptly **upon the completion of briefing.** (New 01/2001)

9-1.2 Release Pending Appeal

(a) * * * *

(b) * * * *

(c) **Unless otherwise directed by the court,** ~~The government~~ respondent shall file a written response to all motions for bail **or revocation of bail** pending appeal **of a judgment of conviction** within ~~7~~ **10** days of ~~receipt thereof~~ **service of the motion.**

(d) **Unless otherwise directed by the court,** ~~A~~ the movant for bail pending appeal may file an optional reply within ~~three (3)~~ **7** days of **service** ~~receipt of the government's response to the bail motion.~~ (New 01/2001)

(e) * * * *

Purpose of Amendments: To require parties appealing district court's decisions re a pre-trial bail motion to cite FRAP 9(a) in the caption and change of response time to submit optional reply.

CIRCUIT RULE 27-11

MOTIONS; EFFECT ON SCHEDULE

(a) Motions requesting the types of relief noted below ~~and filed within 28 days from the filing of the notice of appeal~~ shall ~~vacate~~ **stay** the schedule for record preparation and briefing pending the court's disposition of the motion:

- (1) ~~dismissal for lack of jurisdiction;~~
- (2) ~~transfer to another circuit tribunal;~~
- (3) full remand;
- (4) in forma pauperis status **in this court**;
- (5) production of transcripts at government expense ~~in civil appeals; and~~
- (6) appointment **or withdrawal** of counsel
- (7) **certification of question of state law; and**
- (8) **summary disposition.**

Briefing and record preparation shall be re-set as necessary upon the court's disposition of the motion.

~~Motions filed after this 28 day period will not vacate the schedule, and the parties shall comply with that schedule until they are notified by the court to do otherwise, except as provided in subsection (b) infra.~~

~~(b) If within 14 days of the service of the opening brief, appellee moves to dismiss the appeal for lack of jurisdiction, the remainder of the briefing schedule shall be vacated. Briefing shall be reset as necessary upon the court's disposition of the motion.~~ (rev. 1/96)

Purpose of Amendment: *To offer guidance of the impact of filings of:*

- *all motions for dismissal*
- *motions to transfer a case to all other potential fora*
- *motions to withdraw as counsel*
- *motions for summary disposition and*
- *request to certify questions of state law*
- *motion to proceed in forma pauperis filed in this court*
- *motions for production of transcripts at government expense*